

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION**

IRVING JAMES BERRY, JR.

Plaintiff,

v.

GEORGE A. PEACH, et al.,

Defendants.

No. 4:19-CV-814 JMB

**MEMORANDUM AND ORDER**

This matter is before the Court upon review of plaintiff's pro se complaint. The complaint is defective because it has not been drafted on the Court's form. *See* E.D. Mo. Local Rule 2.06(A). Additionally, plaintiff must either pay the filing fee or file a motion to proceed in forma pauperis.<sup>1</sup> *See* 28 U.S.C. § 1915(a).

Because plaintiff is proceeding pro se, the Court will allow plaintiff to file an amended complaint on the Court's form. Plaintiff has thirty days from the date of this Order to file an amended complaint in accordance with the specific instructions set forth here. All claims in the action must be included in one, centralized complaint form. *See* Fed. R. Civ. P. 7(a)(1), 8(a).

**Additionally, plaintiff is warned that the filing of an amended complaint replaces the original complaint and all previously-filed pleadings, so plaintiff must include each and every one of the claims he wishes to pursue in the amended complaint.** *See, e.g., In re Wireless Telephone Federal Cost Recovery Fees Litigation*, 396 F.3d 922, 928 (8th Cir. 2005).

---

<sup>1</sup> Plaintiff has filed at least three previous cases that were dismissed as frivolous, malicious, or for failure to state a claim. Under 28 U.S.C. § 1915(g), therefore, the Court may not grant the motion unless plaintiff "is under imminent danger of serious physical injury." *See Berry v. Cline*, No. 89-4146 (July 17, 1989); *Berry v. St. Louis Circuit Court*, No. 91-0248 (April 26, 1991); *Berry v. Mitchell*, No. 92-0071 (March 11, 1992). These cases were collected and mentioned in *Berry v. Schiro*, No. 00-4183 (W.D.Mo. November 6, 2000).

**Any claims from the original complaint, supplements, and/or pleadings that are not included in the amended complaint will be deemed abandoned and will not be considered.**

***Id.* The allegations in the complaint must show how each and every defendant is directly responsible for the alleged harms. If plaintiff wishes to sue defendants in their individual capacities, plaintiff must specifically say so in the amended complaint. If plaintiff fails to sue defendants in their individual capacities, this action may be subject to dismissal.**

All of plaintiff's claims should be clearly set forth in the "Statement of Claim." If plaintiff fails to file an amended complaint on the Court's form within thirty days and in compliance with the Court's instructions, the Court will dismiss this action without prejudice and without further notice.

Accordingly,

**IT IS HEREBY ORDERED** that the Clerk is directed to mail to plaintiff a copy of the Court's prisoner civil rights complaint form.

**IT IS FURTHER ORDERED** that the Clerk is directed to mail to plaintiff a copy of the motion to proceed in forma pauperis form for prisoners.

**IT IS FURTHER ORDERED** that plaintiff must file an amended complaint on the Court's form within thirty (30) days of the date of this Order.

**IT IS FURTHER ORDERED** that plaintiff must either pay the \$400 filing fee **or** submit a motion to proceed in forma pauperis within thirty (30) days of the date of this Order.

**IT IS FURTHER ORDERED** that if plaintiff files a motion to proceed in forma pauperis, he must also file a certified copy of his prison account statement for the six-month period preceding the filing of the complaint.

**IT IS FURTHER ORDERED** that if plaintiff fails to comply with this Order, the Court will dismiss this action without prejudice. If the case is dismissed for non-compliance with this Order, the dismissal will **not** count as a “strike” under 28 U.S.C. § 1915(g).

Dated this 5th day of April, 2019.

/s/ **John M. Bodenhausen**  
JOHN M. BODENHAUSEN  
UNITED STATES MAGISTRATE JUDGE